

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

MFA.No. 1179 of 2001(D)

I.C.NO.11/2000 OF EMPLOYEES INSURANCE COURT, PALAKKAD.

APPELLANT: OPPOSITE PARTY:

THE REGIONAL DIRECTOR,
EMPLOYEES' STATE INSURANCE CORPORATION,
NORTH SWARAJ ROUND, THRISSUR - 20

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENTS: APPLICANT

APPOLLO TYRES LIMITED
PERAMBRA P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.S.S.NAIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.1179 of 2001

Dated this the 9th October, 2007.

REFERENCE ORDER

The Regional Director, Employees' State Insurance Corporation, has filed this appeal challenging the order passed by the Employees' Insurance Court, allowing an application filed by the respondent. Appellant issued Ext.A9 notice of demand claiming an amount of Rs.27,812/= towards interest on the amount of delayed remittance of contribution, in respect of 10/97 and 1/98. Respondent filed I.C.No.11/2000 to set aside that order. It was contented that the trade union of the employees of applicant company filed O.P.No.651/97 before this Court, regarding the coverage and this Court has stayed the operation of the notification, by which the coverage under the Employees' State Insurance Act was enhanced from Rs.3000/= to Rs.6500/=. It was averred that the interim order continued till 19.11.1997 and the copy of the judgment was received on 21.1.1998. Thereafter, the applicant had paid the contribution in time. It was averred that in the mean while, the Union again approached this Court, by filing O.P.No. 2351/1998, directing the Government to dispose of the application filed by the Union, and there

was also a stay of collection of contribution till the disposal of the representation. The representation was disposed of on 6.3.1998. On receipt of the order, the applicant paid the arrears of contribution on 10.3.1998. It was contented that there was no default on the part of the respondent in not depositing the amount. The appellant filed a objection contending that as there was delay in making contribution, the respondent company is liable to pay interest. The Insurance Court, after considering the number of decisions, held that as there was stay, respondent company was not liable to pay interest for the delayed payment of contribution. Challenging that decision, this appeal is filed.

2. In **Regional Director, E.S.I. Corporation v. Cannanore Spinning & Weaving Mills** (2001 (3) KLT 393), a Division Bench of this Court took a view that when there is a stay by the Court, the employer is not liable to pay the compensation, and hence, no question of levy of interest arises. But subsequently, another Division Bench of this Court, in an unreported decision, in W.A.No.1277/2003, held that the employer is liable to pay interest, if there is delay in paying the contribution.

3. In **Cannanore Drug Lines v. E.S.I. Corporation** (2007(1) KLT 880), a Division Bench of this Court held that the Act does not give any discretion to the Corporation to exempt an employer from paying interest on delayed payment. It was further held that bona fide impression or belief that the establishment was not covered under the provisions of the E.S.I. Act, does not absolve the appellant from the liability of paying interest on the delayed payment of E.S.I. Contribution. It is seen that the dictum laid down in Cannanore Spinning & Weaving Mills's case, stated above, was not brought to the notice the subsequent Division Bench. There is a conflict between the principle laid down in the above two cases. So, I am of the view that it is to be resolved by a larger bench.

4. It is true that the Apex Court has considered the question as to whether there is any limitation to claim interest. But the further question as to whether the Corporation has got any discretion to exempt an employer, was not considered in that case. So, this case is adjourned to be heard and determined by a Bench of two Judges.

Registry is directed to place the records before the Honourable the Chief Justice for appropriate orders.

**K.PADMANABHAN NAIR,
JUDGE**

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 1179 of 2001

REFERENCE ORDER

Dated: 9th October, 2007.
